

MINUTES  
BOARD OF APPEALS  
VILLAGE OF SEA CLIFF  
VILLAGE HALL  
300 SEA CLIFF AVENUE  
SEA CLIFF, NEW YORK 11579

May 15, 2012

Present:	Chair	Kevin McGilloway
	Members	Dina Epstein Noel Griffin Ted Kopczynski Jamie Weil
	Superintendent of Buildings	Andrew Lawrence
	Village Attorney	Brian Stolar

The meeting was called to order at 8:00 pm.

The Board opened the continued public hearing on the application of NS Metropolitan Bistro, 39 Roslyn Avenue, Sea Cliff, New York for a special permit pursuant to Village Code §138-802 to maintain an existing restaurant. Premises are designated as Section 21, Block 134, Lot 2 on the Nassau County Land and Tax Map. The Board noted that it had received a letter recommending local determination from the Nassau County Planning Commission, but that the applicant had yet to confer with the neighbors concerning the request for extended hours. The Board continued the public hearing to June 19, 2012 at 8:00pm.

The Board opened the continued public hearing on the application of DM Acquisitions, LLC, as owner, and James Muir d/b/a Artaux Catering, 5 Sea Cliff Avenue, Sea Cliff, New York to permit alterations to the premises and operate the premises as a restaurant. Such proposed use requires a special use permit

pursuant to Village Code §138-902 and variances of the following Village Code sections: (a) 138-905 to maintain a lot size of 4,500 square feet, where the minimum required is 15,000 square feet, (b) 138-906 to maintain lot coverage of 3,560 square feet, where the maximum permitted is 1,800 square feet, (c) 138-907 to maintain front property lines of 90.5 and 50 feet, where the minimum required is 100 feet, (d) 138-908 to maintain a structure with less than the required setbacks, (e) 138-910 to maintain front property widths less than required, (f) 138-912 to maintain a structure with less than the required side yard setbacks, (g) 138-918 to establish a business without the required number of off-street parking spaces, and (h) 138-1002 to establish a business with 4 dedicated off-street parking spaces where 14 spaces are required. Premises are designated as Section 21, Block 96, Lots 220 and 221 on the Nassau County Land and Tax Map. The Board noted that it had received a letter recommending local determination from the Nassau County Planning Commission. The Board closed the hearing, and reserved decision.

The Board opened the public hearing on the application of Maurizio Ameri, 23 Downing Avenue, Sea Cliff for a variance of Village Code §138-616 to maintain multiple accessory structures, including three patios, a jacuzzi, a shed and a pizza oven. Premises are designated as Section 21, Block 78, Lot 40 on the Nassau County Land and Tax Map. The Board closed the hearing, and reserved decision.

The Board discussed the DM Acquisitions/Muir application. After such discussion, on motion duly made by Ms. Epstein, seconded by Mr. Kopczynski,

and adopted unanimously, the Board granted the application in accordance with the decision annexed hereto.

The Board discussed the Ameri application. After such discussion, on motion duly made by Mr. Kopczynski, seconded by the Chair, and adopted unanimously, the Board determined that it is the lead agency with respect to environmental review, the action is a Type II matter under SEQRA that requires no further environmental review, and granted the application in accordance with the short form decision annexed hereto.

There being no further business, the meeting was adjourned at 8:24pm.

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## **DM ACQUISITIONS, LLC and JAMES MUIR d/b/a ARTAUX CATERING**

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on May 15, 2012, on motion of Ms. Epstein, seconded by Mr. Kopczynski, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing, and other matters properly within the consideration of this Board and having discussed the subject application, rendered the following determination:

1. DM Acquisitions, LLC, as owner, and James Muir d/b/a Artaux Catering, 5 Sea Cliff Avenue, Sea Cliff, New York applied to permit alterations to the premises and operate the premises as a restaurant. Such proposed use requires a special use permit pursuant to Village Code §138-902 and variances of the following Village Code sections: (a) 138-905 to maintain a lot size of 4,500 square feet, where the minimum required is 15,000 square feet, (b) 138-906 to maintain lot coverage of 3,560 square feet, where the maximum permitted is 1,800 square feet, (c) 138-907 to maintain front property lines of 90.5 and 50 feet, where the minimum required is 100 feet, (d) 138-908 to maintain a structure with less than the required setbacks, (e) 138-910 to maintain front property widths less than required, (f) 138-912 to maintain a structure with less than the required side yard setbacks, (g) 138-918 to establish a business without the required number of off-street parking spaces, and (h) 138-1002 to establish a business with 4 dedicated off-street parking spaces where 14 spaces are required. Premises are designated as Section 21, Block 96, Lots 220 and 221 on the Nassau County Land and Tax Map (the "Subject Premises").
2. The Subject Premises is located in a Business B zoning District, and are improved with a commercial building. At the hearings, the applicant testified:
  - a. Currently, the building is occupied by a hair salon. Three of the presently configured units are vacant, including the westerly unit that is the subject of this application. The westerly unit contains approximately 1,390 square feet, and the applicants propose to use that unit for a food preparation facility. Mr. Muir operates a catering establishment and intends to utilize the unit solely for food preparation associated with the catering business and a tasting room for potential clients. The tasting room will include a table that will accommodate no more than 8 people. As described by the applicant, the tasting room will only be for potential clientele by appointment. It is not intended to be a walk in restaurant, and it will not be advertised as a restaurant. The

tasting room and the food preparation will take place only on Thursdays, Fridays and Saturdays from 5pm through 10pm. The business has only one van and that van will be parked in the parking lot adjoining the premises.

- b. The Subject Premises has no parking. Parking is available on the street, and also in a parking lot adjoining the Subject Premises. According to the applicant, the tenant will have the right to use 4 parking stalls in the adjoining parking lot. The applicant testified that the catering business requires only 2 employees to prepare the food.
  - c. Presently, the only other occupant utilizing the premises at the same time as the proposed tenant is the hair salon, which is open on Thursdays until 8pm. The owner of the Subject Premises testified that the space, which previously was occupied by a butcher shop, is difficult to rent due, in part, to the parking limitations. The proposed use will require less parking usage than the butcher shop and only will require parking spaces in the evening hours. The parking lot on the adjoining premises contains stalls for 27 cars, and the applicant will enter into a license agreement with the parking lot owner to rent 4 spaces.
  - d. The applicant provided the Board with detailed information concerning the rooftop exhaust system. The applicant testified that the system, and the food preparation area, will comply with Department of Health and Fire Marshal requirements. To mitigate the impact caused by an exterior dumpster, the applicant proposes interior storage of garbage in compliance with any laws applicable to food establishments.
  - e. The applicant stated that he would be obtaining a liquor license for off-site functions. Implicit in this statement was that the license would not be for service on premises, and the Board's determination herein was rendered with this understanding.
- 3. The restaurant portion of the Subject Premises had been used as a restaurant for many years, but in reviewing the present application, the Board, and the Village, was not able to locate any Village approvals for that use.
  - 4. In addition to the variance for parking spaces, the proposed use requires a special permit. As a matter of law, special permits allow

specific uses in a given district, provided that the applicant can demonstrate that it meets or complies with certain standards set forth in the zoning regulations related to such use and that the proposed use will not be a detriment to the neighborhood.

5. In connection with the granting of a special permit, the Board has the power to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property and which are not inconsistent with the provisions of the zoning regulations.
6. With regard to the parking, Village Code §138-1008 provides that where the required off-street parking spaces cannot be located on the same lot with the use served, a variance may be granted by the Board to the extent that the applicant can provide the required number of spaces within 500 feet of the premises or the applicant can lease the required number of spaces from other property owners within 500 feet of the lot (as long as those spaces are available to the applicant during the times of operation of the use). A variance still may be granted even if the applicant is unable to demonstrate either of the above so long as the applicant agrees to pay to the Village an amount of money equal to the cost of construction of the number of spaces the applicant is required to provide. This cost is to be computed in accordance with the amounts most recently set by resolution of the Board of Trustees.
7. As there are no spaces available on-site and the applicant has not been able to demonstrate that only four (4) other spaces may be available on an adjoining site, to obtain a parking variance for the total of 14 spaces required for the use, the applicant may obtain the variance for the 14 parking spaces if the applicant pays to the Village the required parking fee for the 10 parking spaces not available as provided in paragraph 6 above.
8. The Board hereby grants the parking variance as the Board finds that the use requires the parking of one vehicle at all times (catering van), the operational hours are substantially limited (Thursday, Friday and Saturday, from 5pm-10pm), the nature of the business is limits the number of parking spaces needed as the only people utilizing the premises will be not more than 8 potential clients and 2 employees at any one time, and that 4 parking spaces are being made available to the applicant in an adjoining parking lot. Under such circumstances, the proposed use of the space at the Subject Premises mitigates the potential parking issues that normally would be associated with a retail or commercial use of the Subject Premises.

9. The authority of this Board to grant the variance for parking is limited by law and the provisions of the Zoning Code. Since the applicant is unable to satisfy the provisions of section 138-1008(A)(1) or (2), the authority of this Board to grant a variance is conditioned upon the applicant complying with the provisions of section 138-1008(A)(3). Accordingly, subject to compliance with section 138-1008(A)(3), including payment of the required fee for 10 spaces, and the conditions set forth below, the Board grants a variance of Village Code §§138-918 and 1002. The sums due are to be paid no later than 30 days after this decision is filed with the Village Clerk. To fully satisfy this requirement, the applicant must file a letter with the Village Clerk acknowledging its consent to this condition and agreeing to pay the required sum for 10 parking spaces. In addition, this approval is subject to the applicants' providing the Village with a copy of the license agreement demonstrating that 4 parking spaces are dedicated to the applicant for use during the hours proposed and for the period of the special permit granted herein. Such license agreement, to be considered acceptable and compliant with the Board's condition herein, must be approved as to form by the Village Attorney.
10. As to the remaining variances, each variance relates to an existing condition of the premises. As none of those conditions is changed by the application, the Board grants those variances.
11. The applicants' request for a special permit is also granted on the conditions set forth below. To balance the potential adverse impacts the proposed use may have on nearby properties and traffic in the area with the obligation of this Board to issue a special permit where adequate, reasonable, and appropriate conditions and restrictions can be imposed to minimize the adverse effects, the special permit is granted to operate the portion of the Subject Premises depicted in the plans submitted with the application as a restaurant subject to the following conditions:
  - a. The special permit is granted to the applicants only or to any business or entity in which the tenant applicant has a controlling interest;
  - b. The parking of vehicles by patrons of the premises, employees or suppliers shall not interfere with the normal flow of traffic on the adjoining streets;
  - c. There shall be no outside storage of supplies, equipment, materials, garbage, rubbish or any other items used in connection with the restaurant;

- d. Exterior lighting of the premises shall be designed so as to minimize any impact on the adjoining properties through shielding, directional lighting and reduction of glare and reflection. Any new exterior lighting or building lighting shall be mounted at a height and in a location such that no light spillage of 0.1 foot-candle or higher shall extend beyond the property lines of any nearby residential property. There shall be no additional lighting for outdoor usage, except for table candlelight;
- e. The applicant shall comply with the conditions imposed in connection with the granting of the parking variance application, including submitting the required letter and paying the fee required for all 10 spaces;
- f. Seating shall be limited to prospective clientele only. The catering business shall not be advertised as a restaurant and shall not be open to the general public (except by appointment in connection with the tasting of food by prospective clientele of the catering business). Such seating shall be limited to 8 total seats;
- g. The cooking equipment shall be limited to the equipment proposed by the applicant, and the exhaust system for the cooking facilities shall be identical to the exhaust system proposed by the applicant. Any change to the system shall require the approval of the Superintendent of Buildings. The exhaust system shall be in conformity with any requirements imposed by the Fire Marshal and/or Nassau County Department of Health;
- h. No noise, fumes, or similar sources of nuisance are to emanate in a manner as to be unreasonably annoying to surrounding property owners;
- i. Except as provided elsewhere in this decision, there shall not be any outside seating on the Subject Premises without additional application to this Board;
- j. The hours of operation for either the cooking at the premises or the tasting of food by prospective or existing clientele shall be Thursdays, Fridays and Saturdays from 5pm through 10pm. Any extension of hours beyond the hours proposed by the applicant, and conditioned herein, requires a reapplication to this Board, as the Board has granted the application based on the limited hours;
- k. Any music provided shall be background music only, provided through non-amplification methods;
- l. The Subject Premises shall not be used for any use that intensifies or increases the usage or the parking requirements or the potential impacts of the premises without further application to the Board;



- m. The applicant may obtain a liquor license in accordance with the applicant's representation that such license would be for off-site catered functions only;
- n. Loitering outside of the restaurant is prohibited;
- o. Cooking equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, parking area, alleys, sidewalks, neighboring properties or storm sewers;
- p. Prior to issuance of a certificate of occupancy, the applicant shall obtain full approval, if necessary, from the Nassau County Department of Health and all other agencies for the preparation of food and any required modifications to the septic or water systems;
- q. Any fire sprinkler system and use of the premises for cooking purposes shall conform to applicable NFPA requirements, as determined by the Building Superintendent or any municipal agency with jurisdiction;
- r. No trash or debris from the restaurant shall be stored outside;
- s. No employees or customers shall be permitted to smoke on the premises or outside the premises, either on the Subject Premises or in the public right-of-way
- t. The applicant shall provide the Village with a license agreement demonstrating the availability of four parking spaces on the adjoining property, and such agreement shall be subject to review and approval as to form of the Village Attorney;
- u. The applicant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all special use permit conditions and requirements contained herein; and
- v. Because of the potential of abuse which the proposed special permit use presents if not supervised correctly and the resultant adverse impacts on the surrounding property owners and the Village and its residents that could result, this Board, mindful of its responsibilities to protect nearby residents from over commercialization of the area and other potential adverse impacts and the limited ability of the applicant and/or operator to completely control the adverse impact which the business may generate, will grant the special permit to operate as proposed for a period of one (1) year commencing on the date that this decision is filed with the Village Clerk. The special permit shall be limited to the operation of a restaurant by the applicant, and any change in ownership shall require a new application to this Board for a special permit. To extend the special permit, prior to the

expiration of the one (1) year period, but in no event sooner than four months prior to said date, the applicant, if it desires to continue the use of the premises in the manner proposed by the application, shall reapply to the Board having jurisdiction for a renewal of the special permit. The application shall be made in a timely manner so as to permit this Board to render its decision prior to the expiration of the aforesaid one (1) year time period. The provisions of this paragraph shall constitute a condition of this decision.

12. If one or more of the aforesaid conditions of this decision are violated, the Village shall have the right to suspend or revoke the special permit in accordance with the procedures set forth in the Village Code.

### **AMERI SHORT FORM DECISION**

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on May 15, 2012, on motion duly made by Mr. Kopczynski, seconded by the Chair, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

1. Maurizio Ameri, 23 Downing Avenue, Sea Cliff for a variance of Village Code §138-616 to maintain multiple accessory structures, including three patios, a jacuzzi, a shed and a pizza oven. Premises are designated as Section 21, Block 78, Lot 40 on the Nassau County Land and Tax Map.
2. The applicant is the record owner of the subject premises.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
4. The Board provided notice of the application to the Nassau County Planning Commission in accordance with the requirements of the agreement between the Village and the Planning Commission, and no response was submitted by the Planning Commission.
5. The relief requested in the application is granted provided that (a) the structures are maintained in the location as depicted in the plans submitted with the application and all requirements of the building department; (b) the jacuzzi shall be provided with a barrier, safety cover or any other required safety feature to prevent unattended access, as required by law, and shall comply with all other safety

features applicable to Jacuzzis, as required by law, and (c) the work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

